

CLOSED SESSION
Tuesday, September 4, 2001

Present were Chair Marie H. Huffman, Vice-Chair W. Steve Ikerd, and Commissioners Katherine W. Barnes, Barbara G. Beatty, and Dan A. Hunsucker.

Also present were County Manager/Deputy Clerk J. Thomas Lundy, Deputy County Manager Steven D. Wyatt, County Attorney Robert O. Eades, Staff Attorney Debra Bechtel, and County Clerk Thelda B. Rhoney.

At its meeting on Tuesday, September 4, 2001, at 9:50 a.m., (the meeting was changed from Monday, September 3, 2001 until Tuesday, September 4, 2001 due to Labor Day Holiday) upon a motion by Commissioner Barnes, and unanimously carried, the Board recessed into Closed Session, in accordance with NCGS 143-318.11 (a) (3) To consult with an attorney employed or retained by the public body in order to preserve the attorney-client privilege between the attorney and the public body regarding the cases of Estate of Caleb M. Causby, et.al., vs. Catawba County Public Health Department, et.al., 01CVS2580, and Catawba County vs. Charles S. Wilfong and Jack C. Wilfong, 2000CVS3270.

1. Estate of Caleb M. Causby, et.al., vs. Catawba County Public Health Department, et.al., 01CVS2580.

Attorney Debra Bechtel updated the Board on this case by saying Caleb M. Causby's mother received prenatal care at the Catawba County Public Health Department and Caleb was stillborn at Catawba Memorial Hospital. The County was named in the lawsuit because of our contractual relationship with Catawba Memorial Hospital. CNA is the Catawba County Public Health Department's insurance carrier. An indemnification clause now exists whereby the hospital would have defended the County in this action; however, at the time of this cause of action the indemnification was not in place

David Parker with Sedgewick, the insurance carrier for the County in general matters, was able to negotiate with CNA so that Sedgewick would provide protection for Catawba County as well. Attorney Bechtel spoke with Attorney John Beyer, attorney from Parker, Poe, Adams, and Burnstein, LLP, whom CNA hired to defend the Public Health Department in this case who was planning on filing an extension for time to answer the complaint, on behalf of Catawba County.

After summarizing pertinent legal issues relating to the claims, Attorney Bechtel noted there were no allegations of negligence as to Catawba County or the Public Health Department.

Attorney Bechtel stated that Attorney Beyer would move to have the Health Department and the County removed from the lawsuit.

Marie H. Huffman, Chair

Thelda B. Rhoney, County Clerk

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1. Catawba County vs. Charles S. Wilfong and Jack C. Wilfong, 2000VCS3270.

Barry B. Edwards, Utilities and Engineering Director was invited into this part of the closed session.

Attorney Debra Bechtel summarized a need for additional property at the Blackburn Landfill and reminded the Commissioners that approximately 110 acres of property owned by Charles and Jack Wilfong and adjoining the current landfill had been condemned approximately one year ago. A deposit of \$491,200, an amount determined by an appraisal, has been deposited with the Clerk of Court pursuant to state statute.

County Attorney Robert Oren Eades said mediation for this case has been scheduled for September 17, 2001 as required by law. He explained that he, Attorney Bechtel, and Attorney Steve Thomas of his firm believe it is important to settle this case if it can be done in a manner fair to the County. He also explained the risk the County faces if a settlement is not possible. Attorney Eades noted the Wilfongs think the property is worth \$1.4 - \$1.75 million, which creates tremendous exposure to the county.

The attorneys needed direction from the Board on three issues.

The three related issues are:

1. The Board should appoint County Attorney Robert Eades the official representative of the Board of Commissioners for the purpose of negotiating at the September 17, 2001 mediation.
2. Board Direction on the County's willingness to work with the Catawba County Historical Association to preserve historic structures on the Wilfong property, which include an 1870 house, a two room school, and a post and beam construction barn. Of these, the barn is the most important and most easily preserved. Attorney Eades has discussed with the Historical Association the feasibility of moving or otherwise protecting the barn. The Historical Association is interested in moving the barn to Murray's Mill for use as an Agricultural Heritage Exhibit Hall. If preserving the barn, and perhaps naming it for the Wilfong family, could assist in reaching a settlement with the Wilfongs, Attorney Eades suggested the County agree to cooperate with the Catawba County Historical Association in such a project.
3. Guidance from the Board as to the County's willingness to allow the Wilfongs to remain living on the property for some period of time, and/or granting permission to the Wilfongs to return to the property and "tinker" with their old tractors and equipment. Attorneys Eades and Bechtel suggested that such periods of time should be determined by the engineers.

Mr. Edwards said wells must be put on the Wilfong property in order to conduct tests for at least one year pursuant to State law.

Attorney Bechtel reported on the Knox property located adjacent to the Wilfong property. Attorney Eades stated Mr. Knox is interested in selling his land for approximately \$750,000. The County's appraisal came back at \$587,000. These figures are important in determining the per acre value of land and these numbers were discussed with the Commissioners so they could give direction to the attorneys for the mediation with the Wilfongs.

Mr. Edwards said obtaining the Knox property is important in order to protect the ground water in case of a future contamination as well as a soil borrow area.

Attorney Bechtel said the road through the Wilfong property had been scheduled to be paved by NC Department of Transportation and that project has been put on hold due to the current condemnation action. If the County obtains the Knox property, it would further affect the paving project.

Attorney Eades explained that if this case were to go to trial the jury may award an amount closer to what the property owners requested instead of the County's appraisal. He further explained that while Catawba County could attack at trial the Wilfongs estimate of value, Catawba County could not appeal a jury's determination of value. He recommended negotiating with an upper limit of \$900,000 to avoid the risk of paying much more upon a jury's verdict.

The Board recommended that County Attorney Eades be authorized to negotiate up to \$700,000 and the time periods of the Wilfong brothers to reside on the property and or come back and "tinker" on the property be left to the discretion of the engineers on the property. The Board also agreed to cooperate with the Historical Association regarding the Wilfong barn. Attorney Eades can come back before the Board to request additional money for further negotiations if necessary.

At 10:48 a.m., the Board returned to open session and appointed County Attorney Robert Oren Eades as official representative for the purpose of negotiating during a September 17, 2001, court ordered mediation. Attorney Steve Thomas and the County's Staff Attorney Debra Bechtel will also be attending the mediation.

Marie H. Huffman, Chair

Thelda B. Rhoney, County Clerk